

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| CALVIN THOMAS, | : | Case No. 1:05-CV-02138 |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | JUDGE KATHLEEN O'MALLEY |
| | : | |
| THISTLEDOWN, Inc., et al., | : | <u>ORDER</u> |
| | : | |
| | : | |
| Defendants. | : | |

Before the Court are Non-Party Avery Friedman and Sarah Moore's *Motions for Temporary Restraining Order and Preliminary Injunction* (Docs. 39, 41) ("Motions"), in which Non-Parties Friedman and Moore request an order to temporarily and preliminarily stay the proceedings in the case of *Calvin Thomas v. Avery Friedman, Esq., et al.*, Cuyahoga County Case No. CV-07-636137. Non-Party Moore requests that this Court direct an order not only to the Cuyahoga County Court, but to Plaintiff and his counsel as well. (*See* Doc. 41.)

The pending Motions are unusual: both request an order enjoining the proceedings of a state court. In considering these Motions, the Court is cognizant and appreciative of the comity extended by the court in question – Judge Peter J. Corrigan stayed proceedings on the eve of trial to give this Court time to consider the instant motions. This Court, for its part, does not lightly intrude on another jurisdiction's proceedings.

Unfortunately, the time afforded this Court by Judge Corrigan's stay order is insufficient to allow the parties a full opportunity to present their positions to the Court, and to permit the Court to fairly and adequately assess the important questions presented by the pending Motions. The Motions were filed on January 21 and January 22 and Thomas filed a strenuous, well-written opposition yesterday, January 22. Though Friedman and Moore have not had a chance to file a reply and the Court has not had time to conduct a hearing, Judge Corrigan's stay expires in two days, on Monday, January 26.

Although this Court has great respect for the principles of sovereignty and federalism, given the significant and complex nature of the questions presented by these Motions and the opposition thereto, the Court finds that, to the extent they seek to maintain the status quo, the Motions are well-taken under the standards applicable to a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure.¹ Accordingly, the Court hereby **ORDERS**:

(1) Judge Peter J. Corrigan to **STAY** all proceedings in *Calvin Thomas v. Avery Friedman, Esq., et al.*, Cuyahoga County Case No. CV-07-636137 until this Court can rule on the underlying Motions for Preliminary Injunction (Docs. 39, 41.) This Court's ruling shall be issued prior to **MONDAY, FEBRUARY 9**.

(2) Plaintiff Calvin Thomas and his counsel to refrain from any additional legal action in any forum against any of the defendants in *Calvin Thomas v. Avery Friedman, Esq., et al.*, Cuyahoga County Case No. CV-07-636137 until this Court can rule on the underlying Motions for Preliminary Injunction (Docs. 39, 41).

(3) Non-Parties Friedman and Moore to file a reply to Plaintiff Thomas' opposition by **MONDAY, JANUARY 26 at 4:30 pm**.

(4) Parties to submit any additional materials they deem pertinent to the appropriateness of this Court issuing the requested Preliminary Injunction no later than **FRIDAY, JANUARY 30 at 4:30 pm**.

¹ Among other considerations, Non-Parties Friedman and Moore would suffer irreparable harm absent this Order.

(5) Plaintiff Thomas and Non-Parties Friedman and Moore to be available for a hearing on the Motions for Preliminary Injunction on **TUESDAY, FEBRUARY 3 at 5:30 pm.**

IT IS SO ORDERED.

s/Kathleen M. O'Malley

**KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE**

Dated: January 23, 2009